

HAROLD P. GEWERTER, ESQ.

E-filed: 7/16/08

Nevada Bar No. 499

HAROLD P. GEWERTER, ESQ., LTD.

5440 W. Sahara Avenue, Third Floor

Las Vegas, Nevada 89146

Telephone: (702) 382-1714

Fax: (702) 382-1759

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * * * *

MARY WIRGES, an individual, ALISTER BARRON, an individual, PAUL J. BEEHLER, an individual, TRIAD COMMERCIAL SERVICES, LLC, a Nevada Limited Liability Company,

Plaintiffs,

vs.

CARIBBEAN INVESTORS DEVELOPMENT INTERNATIONAL, INC. a Florida Corporation, VINCENT DONMOYER, an individual, BRUCE WALKO, an individual, RONALDO ORTIZ, an individual, DAVID MILLER, an individual, RIVER OAKS CAPITAL MANAGEMENT, INC. a Texas Corporation, SUZANNE BILLINGSLEY, an individual, ANYTHING I WANT, a Nevada Corporation, JOHN MARINO, ESQ. an individual, STRATEGY INSURANCE LIMITED, a foreign corporation, AMAHOK INTERNATIONAL, LLC, a Alaska Limited Liability Company; DOES I through X, inclusive; ROE CORPORATIONS XX through XXX, inclusive,

Defendants.

CASE NO.:

PLAINTIFF'S COMPLAINT FOR:

1. SECURITIES FRAUD;
2. FRAUD;
3. FRAUDULENT TRANSFER;
4. BREACH OF CONTRACT;
5. DECLARATORY RELIEF
6. INTENTIONAL MISREPRESENTATION
7. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
8. CONVERSION
9. CIVIL CONSPIRACY
10. BREACH OF FIDUCIARY DUTY

DEMAND FOR JURY TRIAL

1 COME NOW, Plaintiffs, by and through their attorney of record, HAROLD P.
2 GEWERTER, ESQ., of the law firm of HAROLD P. GEWERTER, ESQ., LTD., and for their
3 Complaint against Defendants, aver and allege as follows:

4 **JURISDICTION AND PARTIES**

5 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 and 15
6 U.S.C. §78(a), et seq., and the pendent jurisdiction of this Court. Venue is proper in this Court
7 pursuant to 28 U.S.C. § 1391 (b)(2) and 15 U.S.C. §78 aa.

8 2. Plaintiff, MARY WIRGES (hereinafter “WIRGES”) is and was a resident of
9 Clark County, Nevada.

10 3. Plaintiff, ALISTER BARRON (hereinafter “BARRON”) is and was a resident of
11 Clark County, Nevada.

12 4. Plaintiff, PAUL J. BEEHLER (hereinafter “BEEHLER”) is and was a resident of
13 Clark County, Nevada.

14 5. Plaintiff, TRIAD COMMERCIAL SERVICES, LLC (hereinafter “TRIAD”) is a
15 Nevada Limited Liability Company duly authorized and existing under the laws of the State of
16 Nevada.

17 6. Defendant, CARIBBEAN INVESTORS DEVELOPMENT INTERNATIONAL,
18 INC. (hereinafter “CARIBBEAN”) is a corporation duly authorized and existing under the laws
19 of the State of Florida, and doing business in Clark County, Nevada.

20 7. Defendant, VINCENT DONMOYER (hereinafter “DONMOYER”) is a resident
21 of Florida, doing business in Clark County, Nevada.

22 8. Defendant, BRUCE WALKO (hereinafter “WALKO”) is a resident of Florida,
23 doing business in Clark County, Nevada.

24 9. Defendant, RONALDO ORTIZ (hereinafter “ORTIZ”) is a resident of Florida,
25 doing business in Clark County, Nevada.

26 10. Defendant, DAVID MILLER (hereinafter “MILLER”) is a resident of Texas,
27 doing business in Clark County, Nevada.
28

1 11. Defendant, RIVER OAKS CAPITAL MANAGEMENT, INC. (hereinafter
2 “RIVER”) is a corporation duly authorized and existing under the laws of the State of Texas,
3 doing business in Clark County, Nevada.

4 12. Defendant, SUZANNE BILLINGSLEY (hereinafter “BILLINGSLEY”), is a
5 resident of Clark County, Nevada.

6 13. Defendant, ANYTHING I WANT (hereinafter “ANYTHING”) is a corporation
7 duly authorized and existing under the laws of the State of Nevada, doing business in Clark
8 County, Nevada.

9 14. Defendant, JOHN MARINO, ESQ. (hereinafter “MARINO”) is a resident of
10 Florida, doing business in Clark County, Nevada.

11 15. Defendant, AMAHOK INTERNATIONAL, LLC (hereinafter “AMAHOK”) is an
12 Limited Liability Company duly authorized and existing under the laws of the State of Alaska,
13 doing business in Clark County, Nevada.

14 16. Defendant, STRATEGY INSURANCE LIMITED (hereinafter “STRATEGY”) is
15 a foreign corporation doing business in Clark County, Nevada.

16 17. The true names of Defendants DOES I through X, inclusive, and ROE
17 CORPORATIONS XX through XXX, inclusive, whether individual, corporate, associate or
18 otherwise are unknown to Plaintiff, who therefore sues such defendants by fictitious names,
19 Plaintiff is informed and thereupon alleges that each of the defendants designated herein as a
20 DOE or ROE CORPORATION is in some way responsible for the damages claimed by Plaintiff
21 herein. Plaintiff will ask leave of this Court to amend this Complaint to insert the true names and
22 capacities of Defendants DOES I through X, inclusive and ROE CORPORATIONS XX through
23 XXX, inclusive, when the identities have been ascertained, to formulate appropriate allegations,
24 and to join such Defendants in this action.

25 18. Upon information and belief, at all times relevant hereto, each of the Defendants
26 set forth herein was the principal, agent, employee, employer or co-conspirator of each other, and
27 at all relevant times were acting within the course and scope of such relationships.

19. Plaintiffs are informed and believe that at all times relevant hereto, Defendants were principals, owners, and managers of each other Defendants, and treated each other Defendant and its finances as a mere shell, instrumentality, and conduit through which each other Defendant carried on business in name only, exercising control and dominance of such each other business to such an extent that any individuality or separateness of each other Defendant did not exist, and to maintain the fiction of a separate business entity would promote fraud and sanction injustice, such that each other Defendant should be treated as the alter egos of one another.

GENERAL ALLEGATIONS

20. In late August or early September 2007, Plaintiffs were introduced to Defendant BILLINGSLY for the purpose of arranging hard money loans for Plaintiffs to fund.

21. Defendant BILLINGSLY operated through her shell corporation, Defendant, ANYTHING I WANT, of which Defendant BILLINGSLY is believed to be the only shareholder.

22. Defendant BILLINGSLEY working through and with Defendants MILLER and RIVER presented Plaintiffs with information regarding a purported loan to Defendant CARIBBEAN.

23. Defendant RIVER is Defendant MILLER's corporate operating entity and alter ego.

24. Among the information provided to Plaintiffs through Defendant BILLINGSLEY and possibly others, directly or indirectly, was a letter of commitment (“Letter of Commitment”) for a surety bond in favor of Defendant CARIBBEAN issued by Defendant STRATEGY.

25. Among the information which was later provided to Plaintiffs through Defendant BILLINGSLY and possibly others, directly or indirectly, was a letter of commitment in favor of Defendant CARIBBEAN issued by Defendant AMAHOK as a “take out” partner of Defendant CARIBBEAN.

1 26. Defendants DONMOYER, WALKO, BRUCE and MILLER through Defendant
2 BILLINGSLY, and possibly others, directly or indirectly, presented such Letters of Commitment
3 as security for a purported loan.

4 27. Defendants MILLER and BILLINGSLY recommended and encouraged Plaintiffs
5 to enter into such purported loan transaction.

6 28. On or about September 13, 2007, Plaintiffs WIRGES, BARRON and BEEHLER
7 (through TRIAD) signed a loan agreement in the amount of \$400,000.00 with Defendants
8 DONMOYER, ORTIZ, WALKO and CARIBBEAN.

9 29. Simultaneously with the signing of the above purported loan agreement, Plaintiffs
10 were delivered a Confession of Judgment relating to the Loan Agreement in the amount of
11 \$400,000.00 and signed by Defendants ORTIZ, DONMOYER and WALKO individually and on
12 behalf of Defendant CARIBBEAN. Plaintiffs also wired funds to, through or for the benefit of
13 Defendants (including but not limited to Defendant MARINO, who is an attorney) as requested
14 by Defendants.

15 30. Defendants provided Plaintiffs with a copy of a wire instruction showing that
16 funds had been delivered to Defendant STRATEGY for issuance of the Letter of Commitment
17 which was to act as security for this purported loan agreement.

18 31. The Loan Agreement called for repayment of principal and interest on or prior to
19 December 13, 2007.

20 32. Despite numerous demands, no repayment of either interest or principal has been
21 made.

22 33. When Plaintiffs attempted to file the Confession of Judgment, which was
23 prepared by Defendants, they were unable to file such Confession of Judgment as it was deficient
24 in its form and Defendants have refused to correct this deficiency.

25 34. Plaintiffs have attempted to collect per the Letter of Commitment issued by
26 Defendant STRATEGY but Defendant STRATEGY has denied issuing the Letter of
27 Commitment on behalf of Defendant CARIBBEAN and claims to have never received either
28 instructions to do so or the fees required.

1 35. Plaintiffs have also attempted to collect from Defendant AMAHOK who was later
2 named as the security “take out” commitment partner of Defendant CARIBBEAN.

3 36. Defendants BILLINGSLY and MILLER have provided numerous ridiculous,
4 false and misleading excuses for the delays in repayment in an attempt to prevent Plaintiffs from
5 taking legal action to collect on this matter.

6 37. Such delays in legal action brought about by Defendants BILLINGSLY and
7 MILLER resulted in gaining Defendants CARIBBEAN, OTRIZ, DONMOYER and WALKO
8 additional time to transfer and hide assets.

9 38. As of July 15, 2008, the amount due Plaintiffs under the Loan Agreement and
10 related documents is \$400,000.000 principal, \$143,334.05 in interest and \$1,075,000.00 in late
11 fees.

12 **FIRST CAUSE OF ACTION**

13 **(Securities Fraud-Against All Defendants)**

14 39. Plaintiffs repeat and re-allege the preceding allegations as if fully set forth herein.

15 40. Defendants and possibly others, and each of them, by the use and means of
16 instrumentalities of interstate commerce and of the mails, directly or indirectly and knowingly or
17 with reckless disregard employed a device, scheme and artifice to defraud, in connection with the
18 sale of a security, thereby committing fraud and deceit on the Plaintiffs, all with reference to the
19 facts, acts and omissions set forth in this Complaint.

20 41. Specifically, but not necessarily by way of limitation, Defendants and possible
21 others, falsely represented, via the Letter of Commitment, that Plaintiffs’ money would be fully
22 secured by Defendant AMAHOK. Furthermore, Defendants represented to Plaintiffs that the
23 Letter of Commitment was standing and provided documentation showing that part of Plaintiffs’
24 invested funds would be used to pay the fee due for the issuance of such Letter of Commitment.
25 Plaintiffs justifiably relied on these false, material representations when they loaned money to
26 Defendants. A loan agreement is a “security” under 15 U.S.C. §77aa et seq. Furthermore,
27 Defendants DONMOYER, ORTIZ and WALKO are “control persons” under section 20(a) of the
28 Securities Exchange Act, and are therefore liable to Plaintiffs for any fraud committed by

1 Defendants DONMOYER, ORTIZ, WALKO and CARIBBEAN. Defendants MILLER,
2 RIVER, BILLINGSLY, ANYTHING and MARINO assisted Defendant CARIBBEAN and the
3 other Defendants through knowingly making false representations on behalf of Defendant
4 CARIBBEAN and the other Defendants in an effort to induce Plaintiffs to enter into the Loan
5 Agreement.

6 42. That the above-mentioned representations were false and made knowingly or
7 recklessly is evidenced by the fact the Plaintiffs' money has been illegally diverted to the
8 personal use of Defendants DONMOYER, BRUCE, WALKO, MILLER and BILLINGSLY, and
9 possibly others and that Defendants never executed the Letter of Commitment which would have
10 provided Plaintiffs the security agreed upon.

11 43. The actions of Defendants constitute violations of the Securities Act of 1933,
12 Rule 10b-5 of the Securities Exchange Act of 1934, 15 U.S.C. §78j and N.R.S. §90.570.

13 44. As a direct and proximate result of the securities fraud as set forth above,
14 Plaintiffs have sustained damages in an amount to be shown according to proof at the time of
15 trial. Additionally, Plaintiffs are entitled to an award of punitive damages because of the wanton,
16 oppressive and fraudulent actions of Defendants, in an amount to be determined at the time of
17 trial.

18 45. As a further direct and proximate result of the securities fraud as set forth above,
19 Plaintiffs have been required to retain the services of an attorney to prosecute this action and are
20 entitled to an award of reasonable attorney's fees and costs incurred herein.

21 **SECOND CAUSE OF ACTION**

22 **(Fraud—Against All Defendants)**

23 46. Plaintiffs repeat and re-allege the preceding allegations as if fully set forth herein.

24 47. At the time that Plaintiffs loaned and/or transferred the monies to Defendants,
25 Defendants concealed the fact that Defendants had not, and would not, complete the Letter of
26 Commitment and had no intention of financing land with the funds. These omissions of fact
27 were material and were intentionally made by Defendants with the intention that Plaintiffs rely
28 on these omissions.

1 48. Plaintiffs did reasonably rely on the omissions of material fact in deciding to loan,
2 directly or indirectly, Defendants the sum of \$400,000.00. As a result of the fraud, set forth
3 above, Plaintiffs have suffered damages in an amount to be determined at trial.

4 49. The above-mentioned representations were material to Plaintiffs' decision to loan
5 and/or invest with the Defendants.

6 50. At the time that Defendants made these representations, they knew that the
7 representations were false. Defendants made the above misrepresentations intending that
8 Plaintiffs would rely on them in deciding to loan and/or invest with Defendants. Plaintiffs did
9 actually rely on these representations when they loaned and/or invested funds with Defendants.
10 Plaintiffs were justified in relying on the representations made by Defendants.

11 51. As a result of loaning and/or investing fund with Defendants, Plaintiffs suffered
12 damages in an amount to be determined by trial. Additionally, Plaintiffs are entitled to an award
13 of punitive damages, because of the wanton, oppressive and fraudulent activities of Defendants,
14 in the amount to be determined at the time of trial.

15 52. As a further direct and proximate result of the fraud as set forth above, Plaintiffs
16 have been required to retain the services of an attorney to prosecute this action and is entitled to
17 an award of reasonable attorney's fees and costs incurred herein.

18 **THIRD CAUSE OF ACTION**

19 **(Fraudulent Transfer- Against Defendants CARIBBEAN, DONMOYER, MARINO**
20 **ORTIZ and WALKO)**

21 53. Plaintiffs repeat and re-allege the preceding allegations as if fully set forth herein.

22 54. The acts of Defendants CARIBBEAN, DONMOYER, MARINO, ORTIZ and
23 WALKO described hereinabove constitute a fraudulent transfer, made with actual intent to
24 defraud Plaintiffs, who are creditors of all Defendants in direct violation of NRS §112.180.

25 55. These transfers of the assets of Defendants were fraudulent because they were
26 made to insiders, including Defendants DONMOYER, MARINO, ORTIZ and WALKO. The
27 transfers were concealed from Plaintiffs, and the assets of Defendants have been concealed from
28 Plaintiffs.

SEVENTH CAUSE OF ACTION

**(Breach of Covenant of Good Faith and Fair Dealing-Against Defendants CARIBBEAN,
ORTIZ, WALKO and DONMOYER)**

71. Plaintiffs repeat and re-allege every allegation contained in the preceding paragraphs as if fully set forth herein.

72. Implied in every contract is a covenant of good faith and fair dealing. Defendants, and each of them, have breached the covenant of good faith and fair dealing implied in the Loan Agreement and related transactions, as set forth above, by failing to adhere to the terms and conditions of the Loan Agreement and related transactions.

73. As a direct and proximate result of Defendants' bad faith, as set forth above, Plaintiffs have incurred damages in an amount to be determined at trial.

74. As a direct and proximate result of Defendants' actions, Plaintiffs have been required to retain the services of an attorney to prosecute this action and are entitled to an award of reasonable attorney's fees and costs incurred herein.

EIGHTH CAUSE OF ACTION

**(Conversion-Against Defendants CARIBBEAN, ORTIZ, WALKO, DONMOYER and
MARINO)**

75. The Plaintiffs repeat and re-allege every allegation contained in the preceding paragraphs as if fully set forth herein.

76. Defendants, and each of them, have improperly taken from Plaintiffs, certain assets belonging to Plaintiffs, for Defendants' own benefit and to the exclusion of Plaintiffs.

77. Defendants have therefore converted Plaintiffs' assets for their own personal use and gain.

78. As a direct and proximate result of the Defendants' wrongful conduct, Plaintiffs have been damaged in a sum in an amount to be determined at trial.

79. As a direct and proximate result of the Defendants' wrongful conduct, the Plaintiffs have been required to retain the services of an attorney to prosecute this action and, therefore, are entitled to an award of reasonable attorneys' fees and costs incurred therein.

NINTH CAUSE OF ACTION

(Civil Conspiracy—Against All Defendants)

80. Plaintiffs repeat and re-allege every allegation contained in the preceding paragraphs as if fully set forth herein.

81. As set forth above, Defendants CARIBBEAN, ORTIZ, DONMOYER, WALKO, MILLER, RIVER, BILLINGSLY, ANYTHING, MARINO and AMAHOK agreed, expressly or tacitly, to illegally Deprive Plaintiffs of their assets without Plaintiffs' knowledge or consent, with the express purpose of harming Plaintiffs.

82. As a direct and proximate result of Defendants' Civil Conspiracy, as set forth above, Plaintiffs have incurred damages in an amount to be determined at trial. Additionally, Plaintiffs are entitled to an award of punitive damages, in an amount to be determined at trial.

83. As a further direct and proximate result of Defendants' Civil Conspiracy, as set forth, above, Plaintiffs have been required to retain the services of an attorney to prosecute this action and are entitled to an award of reasonable attorney's fees and costs incurred herein.

TENTH CAUSE OF ACTION

(Breach of Fiduciary Duty-Against Defendant MARINO)

84. Plaintiffs repeat and re-allege every allegation contained in the preceding paragraphs as if fully set forth herein.

85. Defendant MARINO acted as attorney escrow agent for Plaintiffs monies and the related loan/investment and as such owed a fiduciary duty to Plaintiffs.

86. Defendant MARINO by engaging in the conspiracy, conversion, fraud, and other activities outlined herein, breached his fiduciary duty.

87. As a direct and proximate result of Defendant MARINO'S Breach of Fiduciary Duty, as set forth above, Plaintiffs have incurred damages in an amount to be determined at trial. Additionally, Plaintiffs are entitled to an award of punitive damages, in an amount to be determined at trial.

